

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.242 OF 2005

Shri Joaquim Joao Fernandes,
H. No.608, Dongorim Majorda,
Salcete - Goa.

.... Petitioner

- Versus -

Shri Nazario Pinto,
Varca, Salcete - Goa.

.... Respondent

Shri A. Borkar for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: FEBRUARY 16, 2006

ORAL JUDGMENT:

1. Heard the Advocate for the petitioner. None present for the respondent, though served. In fact, the notice of the petition was issued to the respondent for final disposal of the petition at the admission stage. However, the respondent has chosen to remain absent. Evidently, the respondent is not interested in contesting the proceedings. Perused the records.

2. The petitioner challenges the order dated 4-1-2005 passed by the Civil Judge, Senior Division, Margao in Special Execution Application No.32/2001/A. By the impugned order, the executing Court has reduced the rate of interest which was decreed by the trial Court in the Special Civil Suit No.204/91/A under the decree dated 29-8-2001. The challenge to the impugned order is that the

executing Court could not have travelled beyond the decree

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or had jurisdiction to decrease the rate of interest awarded by the civil Court under its decree.

3. The petitioner herein filed suit for recovery of money being Special Civil Suit No.204/91/A which was decreed, after hearing the parties, under the judgment and decree dated 29-8-2001. The operative portion of the judgment reads thus:

"The plaintiff's suit is decreed with costs. The defendant do pay to the plaintiff a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) along with interest at the rate of 21% per annum thereof from 21.11.1989, till the actual payment."

4. After disposal of the suit, the petitioner herein filed an application for execution of the decree. The same was filed on 3-11-2001. In the said execution proceedings, the respondent herein filed an application under Section 47 of the Code of Civil Procedure contending that the interest awarded on the decretal amount was inequitable and in excess of what is being awarded in the normal course by different Courts and, therefore, same should be reduced to

the rate of 6% per annum. The said application was objected to by the petitioner, bringing it to the notice of

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the executing Court that the executing Court has no jurisdiction to alter the rate of interest granted by the Civil Court while disposing of the suit and that the executing Court cannot go beyond the decree. The executing Court, however, after hearing the parties, by the impugned order, directed reduction of the rate of interest to 6%. Hence, the present petition.

5. Undoubtedly, Section 47 of the Code of Civil Procedure empowers the executing Court to decide all the questions arising between the parties to the suit in which the decree is passed when such question relates to the execution, discharge or satisfaction of the decree. In other words, the executing Court is empowered to deal with all the points relating to execution or discharge or satisfaction of a decree. The provision speaks of eventualities subsequent to issuance of the decree. It does not relate to the causes arising prior to issuance of the decree. It does not include questions like entitlement or right of the parties to get the decree of the nature passed. The question to be dealt with by the executing Court, therefore, should be necessarily relating to the execution part of the decree, albeit lawful and executable decree and not the one which is a nullity.

6. The power to decide about the executability of the decree cannot and does not include the power to alter the

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decree merely because the executing Court has different opinion about the right of the parties regarding the subject-matter in relation to which the decree is sought to be executed. While dealing with the issue relating to the executability of the decree, the executing Court cannot re-adjudicate upon the rights of the parties to obtain the decree already passed.

7. The executing Court has jurisdiction only to execute the decree in accordance with the procedure laid down under Order 21 of the Code of Civil Procedure. The Apex Court in **Rameshwar Das Gupta v. State of U.P. and another**, reported in AIR 1997 SC 410, while dealing with a matter relating to money claim based on computation of arrears of salary, gratuity and pension in accordance with the service law, and wherein the decree was for a specific amount without any direction for payment of interest thereon, and dealing with the question that in such cases whether the executing Court could step out and grant a decree for execution on the ground of delay in payment or for unreasonable stand taken in execution, clearly held that:

"the executing Court has exceeded its

jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction under

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Section 115, CPC but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest."

In the said case, the executing Court had granted interest on the decretal amount on the ground that there was delay in payment of amount in view of the unreasonable stand taken by the judgment-debtor in denying the legitimate claim of the petitioner.

8. Similarly, in **State of Punjab and others v. Krishan Dayal Sharma**, reported in AIR 1990 SC 2177, it was clearly held that the decree which does not contain any order or direction for payment of any interest on the amount which is payable to the decree holder, it is not open to the executing Court to award interest and the executing Court is bound by the terms of the decree and cannot add or alter

the decree on its notion of fairness or justice. The right of the decree holder to obtain relief is determined in accordance with the terms of the decree.

9. In fact, it is a settled principle of law that the

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executing Court cannot go beyond the decree and the issues which can be dealt with in exercise of powers under Section 47 of the C.P.C. are strictly related to the executability of the decree.

10. In **V. Chinna Lakshmaiah v. Samurla Ramaiah and others**, reported in AIR 1991 A.P. 177, while dealing with the powers of the executing Court under Section 47 of the C.P.C., it was held that, it is not for the executing Court to decide whether the decree passed is legal or illegal or whether it is erroneous or not, though it is open to the executing Court to consider whether the decree sought to be executed is void or not.

11. In **Hira Devi and others v. Harinath Chaurasiya and others**, reported in AIR 1989 Allahabad 11, it was held that, if the defendant fails to raise the plea of the suit being barred under Section 16(c) of the Specific Relief Act, and the decree is passed and becomes final in all respect, he is not entitled to raise such objection at the stage of execution of the decree nor the executing Court

can assume jurisdiction to deal with such objections. Such objections do not relate to execution or discharge or satisfaction of the decree. The term "execution" means carrying into operation the effect of the decree and, therefore, such an issue relating to bar under Section 16(c) of the Specific Relief Act cannot be dealt with in

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exercise of powers under Section 47 of the C.P.C. by the executing Court.

12. In **Ganapathi and another v. Balasubramania Gounder**, reported in AIR 1987 Madras 124, it was held that, the executing Court must execute the decree as it stands and it cannot go into the correctness or validity of the decree except when the decree is a nullity and if the decree is of a Court with jurisdiction, the executing Court is bound to execute the decree as it stands. The question as to the validity of the cannot be agitated in execution proceedings because it is not a question which relates to the discharge or the satisfaction of the decree. It is only where a decree is passed by Court which lacks inherent jurisdiction to pass the decree that the objection to the validity of the decree may be raised in a proceeding in execution. Reliance was placed by the Madras High Court in the decision of the Apex Court in the matter of **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman** (AIR 1970 SC 1475). In the said case before the Madras High Court, in

execution of a mortgage decree the judgment debtors prayed for the relief that the decree in respect of certain properties be so modified as to make it ineffective and inoperative in respect of those properties and, thus the dispute was sought to be raised whether the decree in respect of some of the properties was a valid decree or not. It was held that such a question could not be said to

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relate to the construction of the decree and the objection raised being frivolous, ought to have been rejected when there was no dispute as to the identify of the properties.

13. In **Gopal Ch. Paul v. Smt. Amala Mondal**, reported in AIR 1990 Calcutta 105, while accepting the contention on behalf of the decree holder that while exercising the powers under Section 47, it is not open to the executing Court to go into the question of validity of the decree passed by the competent Court unless it is shown that there was any legal impediment to pass such a decree, and while holding that an executing Court cannot go beyond the decree, also observed, that if it could be shown that the decree is a nullity, certainly the executing Court can go into the said question and hold that the decree is a nullity because it is the fundamental principle that the decree passed by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon and even at the

stage of execution as well as in collateral proceedings.

14. Similarly, the Apex Court in **Sunder Dass v. Ram Parkash**, reported in AIR 1977 SC 1201, held that, the executing Court cannot go beyond the decree nor can it question its legality or correctness. But there is one exception to this general rule and, that is, that where the decree sought to be executed is a nullity for lack of

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inherent jurisdiction in the Court passing it, its invalidity can be set up even in an execution proceedings.

15. The law on the point that the executing Court cannot go beyond the decree is well-settled. The executing Court cannot sit in appeal over the decree passed by the Court nor is entitled to pass an order which will virtually result in affecting the rights of the parties already settled under the decree. Once under the decree the trial Court had adjudicated the issue relating to entitlement of interest and fixed the rate of interest to be 21%, the remedy to the aggrieved being available in the form of an appeal and the executing Court being not entitled to go beyond the decree, certainly the executing Court could not have reduced the interest from 21% to 6%. It apparently discloses total arbitrary exercise of power as also apparent error in exercise of the jurisdiction by the executing Court, ignoring its limitation.

16. Bare perusal of the impugned order discloses that the executing Court merely because the prevailing bank rate is much below the rate of 21%, the executing Court felt it necessary to intervene and reduce the interest, and therefore it ordered the alteration of interest from 21% to 6% from the date of execution of the pro-note. While passing such order, the executing Court even did not think it appropriate to peruse the judgment passed by the trial

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Court wherein it was specifically observed that "The suit promissory note specify the rate of interest at the rate of 21% per annum.". Apparently, the executing Court, without any application of mind and in most arbitrary manner, ignoring the limitation of the jurisdiction of the executing Court, has ordered reduction in the interest from 21% to 6%. This is a clear case of the executing Court going beyond the decree inspite of the fact that the law on the point being clearly settled that the executing Court is not entitled to do so.

17. The learned Advocate for the petitioner has fairly submitted that though at the time when the application for execution was filed, there was no appeal filed by the respondent against the decree of the trial Court. However, subsequently an appeal has been filed and it has been already admitted and pending for hearing before this Court.

18. In the circumstances, therefore, the impugned order cannot be sustained and therefore the petition succeeds and the impugned order is hereby quashed and set aside with costs of Rs.2000/-, payable by the respondent to the petitioner.

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